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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ELIAS GUTIERREZ,

Defendant and Appellant.

B165683

(Los Angeles County
Super. Ct. No. A387828)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Michael Johnson, Judge. Affirmed in part, reversed in part and remanded.

Ted E. Thompson for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,
Michael C. Keller and Lisa J. Brault, Deputy Attorneys General, for Plaintiff and
Respondent.

Elias Gutierrez appeals from judgment entered following a jury trial in which he was convicted of second degree murder (Pen. Code, § 187) and the finding that in the commission of the offense he personally used a deadly and dangerous weapon, a knife, within the meaning of Penal Code section 12022, subdivision (b)(1). Awarded 490 days of custody credit for actual time served and sentenced to an effective term of 16 years to life, he contends the trial court erred when it denied him good time/work time credits. For reasons explained in the opinion, we reverse in part and remand the case for recalculation of presentence conduct credit.

FACTUAL AND PROCEDURAL SUMMARY

As appellant's sole contention relates to the court's refusal to grant him good time/work time credits, it will suffice to observe that in 2002, appellant was tried and convicted of the January 1983 murder of Matilde Sanchez.

At the time of sentencing the court granted appellant 490 days of actual credits and observed he was entitled to "actual only pursuant to Penal Code section 2933.2."

DISCUSSION

Appellant contends and respondent concedes the trial court erred in refusing to award him good time/work time credits. Penal Code section 2933.2 provides in pertinent part, "(a) Notwithstanding Section 2933.1 or any other law, any person who is convicted of murder, as defined in Section 187, shall not accrue any credit as specified in Section 2933. [¶] . . . [¶] (d) This section shall only apply to murder that is committed on or after the date on which this section becomes operative."

While Penal Code section 2933.2 was enacted by the Legislature in 1996, it did not become effective until June 3, 1998, following voter approval in the June 2, 1998, Primary Election. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1317; *People v. Ly* (2001) 89 Cal.App.4th 44, 46-47.) The murder occurred in 1983, hence Penal Code section 2933.2 can have no effect on this case. Accordingly, the case must be remanded with directions to the trial court to calculate and award appellant appropriate presentence conduct credits in accordance with the sentencing laws in effect in January 1983. (See *People v. Hutchins, supra*, 90 Cal.App.4th 1317, fn. 9.)

DISPOSITION

The award of credits is reversed and the cause is remanded to the superior court for recalculation and award of presentence conduct credit in accordance with the law in effect at the time of the offense. In all other respects, the judgment is affirmed.

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CURRY, J.

We concur:

EPSTEIN, Acting P.J.

HASTINGS, J.